

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-186126

DATE: April 20, 1976

MATTER OF: Vogard Printing Corporation

DIGEST:

Where contracting officer was on constructive notice of possibility of error in protester's bid because of disparity in bid prices, but made award to protester without seeking verification, no valid contract came into existence. Therefore default action taken by agency was not appropriate and may be canceled.

The United States Government Printing Office (GPO) has requested our decision relative to whether a contract may be rescinded and a termination for default canceled because of an alleged mistake in bid.

Prusuant to GPO Program 1383-S, bids were requested for the production of a monthly newspaper for the Department of the Army. The bids were requested based on estimated annual production requirements.

On October 29, 1975, six bids were received and were evaluated to be as follows:

Vogard Printing Corporation	\$27,219.16
Braceland Brothers	\$35,248.93
National Creative Printing	\$39,953.43
Reproductions, Inc.	\$40,647.74
Metropolitan Lithograph	\$43,943.17
McDonald and Ewdy Printers	\$44,269.90

Vogard was awarded the contract on November 7, 1975. Three days later Vogard alleged error in bid. As a result of Vogard's refusal to perform the contract at its bid price, GPO terminated the contract for default.

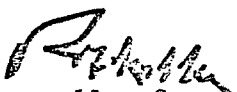
Vogard has stated that its bid was in error due to a miscalculation of the typesetting charges. In support of this contention it has provided a worksheet and a letter from a subcontractor both of which indicate that Vogard underestimated typesetting costs.

As a general rule, when a bid has been accepted the bidder is bound to perform and must bear the consequences of its unilateral mistake. Saligman v. United States, 56 F. Supp. 505 (D.C.E.D. Pa. 1944); Chernick v. United States, 372 F. 2d 492 (Ct. Cl. 1967); 48 Comp. Gen. 672 (1969). However, our Office has held that no valid and binding contract is consummated where the contracting officer knew or should have known of the probability of error, but neglected to take proper steps to verify the bid. 37 Comp. Gen. 685 (1958) and 17 Comp. Gen. 575 (1938). In determining whether a contracting officer has a duty to verify bid prices, we have stated:

" * * * the test is whether under the facts and circumstances of the particular case there were any factors which reasonably should have raised the presumption of error in the mind of the contracting officer (Welch, Mistakes in Bid 18 Fed. B.J. 75, 83) without making it necessary for the contracting officer to assume the burden of examining every bid for possible error by the bidder. * * *" 49 Comp. Gen. 272, 274 (1969), quoting B-164845, January 27, 1969.

It is the contracting officer's view that he was on constructive notice of an error because of the disparity in bid prices both in regard to the total evaluated price and also with respect to unit rate prices offered for the complete product. In support of this latter contention, GPO has forwarded a copy of an abstract of the bids which lists various unit rate prices offered by each of the bidders. As an example, GPO points out that the unit rate price offered by Vogard for the first 1,000 copies of a 12-page newspaper was \$735, while the unit price for the second low bidder was \$1,550. GPO further notes that the unit rate price offered by Vogard for a 16-page newspaper was \$975 versus \$1,950 offered by the second low bidder.

Under the circumstances, we agree with GPO's determination that the contracting officer was on constructive notice of a mistake in Vogard's bid. Since the contracting officer failed to seek verification of Vogard's bid, no valid contract came into existence. See B-178711, June 14, 1973. In view of the foregoing, the default action taken by GPO was not appropriate and should be canceled as administratively recommended. See B-165251, October 8, 1968.


Deputy Comptroller General
of the United States